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Sen. Kent Adams  
Sen. Glenn Howard  
Rep. Ron Herrell  
Rep. Richard Mangus  
Rep. David Wolkins  
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Travis Worl  
Bill Beranek  
Bill Hayden  
Michael Carnahan  
Cliff Duggan  
Tim Maloney  
Michael Brown  
David Lamm  
Rae Schnapp  
Tonya Galbraith  
Alice Schloss

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## WETLANDS SUBCOMMITTEE OF THE ENVIRONMENTAL QUALITY SERVICE COUNCIL

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### MEETING MINUTES<sup>1</sup>

**Meeting Date:** September 28, 2000  
**Meeting Time:** 1:30 p.m.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 401-B  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 3

**Members Present:** Sen. Vi Simpson, Chair; Sen. Kent Adams; Rep. Ron Herrell, Rep. David Wolkins; Randy Edgemon; Alice Schloss

**Members Present:** Rep. Richard Mangus.

**Call to Order.** Sen. Simpson, Chair of the Wetlands Subcommittee of the Environmental Quality Service Council, called the meeting to order. She stated that the purpose of the meeting was to discuss mitigation issues, and she asked representatives of the Indiana Department of Environmental Management (IDEM) to provide an overview of the proposed rule that pertained to wetlands and the mitigation of impacts on wetlands.

**Overview of the Proposed Wetland Rule.** Andrew Pelloso, Senior Environmental Manager, Office of Water, IDEM, provided an overview of the proposed wetland rule and wetland mitigation ratios. (See Exhibit 1.) According to Mr. Pelloso, the regulatory program allows for compensatory mitigation or the creation of wetlands or aquatic bodies to offset the loss of existing wetlands. Congress provided the mechanism of mitigation to allow agencies to address circumstances in which the water body would be destroyed. Humans, however, may not be able to replace a particular wetland. Creating wetlands is relatively young science. Ratios reflect the uncertainty involved in recreating a wetland.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

The rules intend to set forth clear standards with respect to wetland regulation and mitigation. They specify the procedure that IDEM and the applicant are to follow. IDEM maintains a staff of four to review projects and conduct compliance reviews. IDEM has given up its ability to negotiate with respect to the acreage of the mitigation wetland in order to provide clear guidelines on what the ratios should be.

Mr. Pelloso distributed a copy of the proposal as of June 2000. He offered to bring an updated, annotated version of the proposal to the next subcommittee meeting.

IDEM contracted for a study to evaluate wetland mitigation from 1986 through 1996. Mitigation ratios in the rule were based on experiences in other states and were supported by the wetland compensatory mitigation study.

**Wetland Compensatory Mitigation Study. James Robb, Office of Water Management, IDEM** provided the subcommittee with an overview of the Wetland Compensatory Mitigation Study. (See Exhibit 2.) Between 1986 and 1996, IDEM required 345 applicants seeking water quality certifications to provide wetland compensatory mitigation. The study found that 62% of the wetland compensatory mitigation sites were actually constructed; 20% were incomplete; 14% made no attempt to construct the site; and for 3.5% of the cases adequate information on the site could not be located. The majority of the sites were located in northern Indiana. If the applicant did not impact the original wetland, the site was excluded from the study. A site was considered successful if the applicant had established a wetland of the same area that was impacted. The study found that a significant loss of forested wetlands had occurred. Forested wetlands experienced a 70% failure rate whereas meadows experienced an 87% failure rate.

The study did not consider drought conditions and effects on newly constructed or already existing wetlands. The study considered the types of vegetation in general terms. Of the sites that were not completed, reasons included the death of individuals who were to complete the wetland; those who assumed the responsibility may not have known about it; and the business changed names. Of the sites whereon an attempt was made to construct a wetland, but the wetland failed, reasons included poor execution of good plans; too much water on the site; the site was constructed too deep; and the slopes were too severe.

The Army Corps of Engineers is supposed to determine if wetland mitigation sites are complete. IDEM can impose fines for failure to complete.

**Public Comments. Bill Hayden, Sierra Club**, noted that IDEM receives more pressure to complete applications and to grant certifications rather than to enforce the regulations.

**Fred Andes, Barnes and Thornburg**, explained that mitigation banking typically consists of 25 acres or more of constructed wetlands that are used when necessary to offset the destruction of existing wetlands. The wetland bank can be either privately operated or owned by a public institution, such as the Department of Transportation.

**Patrick Bennett, Indiana Manufacturers' Association**, suggested that additional consideration of mitigation banking might be appropriate. He noted that certain citations in the rule contain a lot of assumptions, such as the proposed IAC 7-4-10. For example, the proposed rule indicates that IDEM approves the procedure, but it does not spell out the approval process. Also, proposed IAC 17-4-2 is not clear. He noted that it would be helpful to see an updated copy of the proposal so that interested parties could see what changes have been made, particularly with respect to Tier II wetlands and requirements pertaining to endangered species.

**George Scholka, Save the Dunes**, noted that adhering to the guidelines will not ensure that a wetland will survive. No net loss does not necessarily mean no net loss of the function that the native wetland

provided.

**Rick Wajda, Indiana Builders Association,** indicated his concern about the 25 acre minimum necessary for mitigation banking. He also noted that builders may not be able to secure loans for projects that are waiting on completion of a wetland mitigation project, which could take several years.

**Dennis Clark, IDEM,** explained that an interagency agreement pertaining to mitigation banking was being discussed. Each bank would require a bank charter. Operating requirements would be noted in the agreement. If an entity established a bank, it will need to complete an agreement with the oversight agencies.

**Dr. Dan Willard** explained that studies have found that larger constructed wetlands have a greater chance of succeeding than smaller replacements. The advantage of mitigation banking is that the wetland is built prior to the destruction of an existing wetland so that it is possible to see if the wetland will succeed. Mitigation ratios have nothing to do with the function of the existing wetland.

**Comments from the U.S. Fish and Wildlife Service.** Scott Pruett, with the U.S. Fish and Wildlife Service, was unable to attend the meeting. Sen. Simpson distributed a copy of his comments that he had prepared in print. (See Exhibit 3.)

**Next Meeting Date.** The next meetings were scheduled as follows:

<u>Date</u>	<u>Time</u>	<u>Topic</u>
Oct 19	1:30 p.m.	Economic Problems and Benefits
Oct 30	1:30 p.m.	Recommendations

**Adjournment.** The meeting was adjourned at approximately 3:40 p.m..